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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115

Dear Ms. Salas:

MCI Telecommunications Corporation (MCI) submits this letter in response to questions raised by Commissioner legal advisors in recent discussions concerning the above-referenced docket. MCI has been asked to state its views as to the interplay between the restrictions on the use of customer proprietary network information (CPNI) in Section 222 and the nondiscrimination requirements of Section 272(c)(1) of the Communications Act. In particular, where a Bell Operating Company (BOC) solicits its customer's approval under Section 222(c)(1) to use the customer's CPNI to market services on behalf of its Section 272 affiliate or to disclose such CPNI to the affiliate, does MCI view such solicitation as a "service" to the affiliate under Section 272(c)(1) and, if so, must the BOC provide such solicitation services to all unaffiliated entities requesting such services in a nondiscriminatory manner? In other words, where a BOC solicits such approval, must it also provide the same "approval solicitation service" in the same manner for all requesting interexchange carriers (IXCs)?

MCI did not take a position on this question when it was posed in the Commission's Public Notice requesting further comment in this docket.[1] MCI has argued, however, in response to the Public Notice and in other filings in this proceeding, that Section 272(c)(1) does require that where a BOC obtains its customer's approval to use her CPNI on behalf of its Section 272 affiliate or to disclose it to the affiliate, it must also provide her CPNI to any third party whenever that entity can demonstrate that it has obtained her approval in the same manner. In other words, although Section 222(c)(1) by itself allows, but does not require, a carrier to use or disclose CPNI with the

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[1] DA 97-385 (released Feb. 20, 1997).

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customer's approval, the nondiscrimination requirements of Section 272(c)(1) make that otherwise permissive authorization in Section 222(c)(1) mandatory where an IXC demonstrates that it has obtained the same type of approval from the customer that the BOC obtains on behalf of its affiliate.[2] To enable other entities to fully exercise such nondiscrimination rights under Section 272(c)(1), the BOCs should also be required to provide all requesting IXCs with complete customer lists so that the IXCs can seek such customer approvals and submit them to the appropriate BOC.[3]

MCI did not take a position on the "approval solicitation service" issue because it is skeptical of the actual competitive and practical implications of such a reading of Section 272. There are a number of variations on the approval solicitation service requirement proposal in the record,[4] each of which would have to be developed in greater detail before MCI could endorse any one of them with any degree of assurance. For example, there is the issue of whether the BOC solicitation would draw a distinction between the BOC's affiliate and all other entities or instead would seek blanket approval for all entities.[5] The former approach would raise a host of administrative problems, such as how to ensure a completely neutral solicitation.

These concerns would be magnified if the Commission were to adopt any form of an approval solicitation service requirement in tandem with an "opt-out" implied approval process under Section 222(c)(1). MCI has explained at length the absolute necessity of

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[2] See Further Comments of MCI Telecommunications Corporation at 11-15, 20 (March 17, 1997).

[3] MCI has explained in previous filings that customer names, addresses and telephone numbers do not constitute CPNI. See Response to Commission Staff Questions Re: CC Docket No. 96-115 at 4-8, attached to ex parte letter from Frank W. Krogh, MCI, to William F. Caton, Acting Secretary, FCC, dated Aug. 15, 1997.

[4] See, e.g., Comments of AT&T Corp. at 12-13 (March 17, 1997); Reply Comments of the National Telecommunications and Information Administration at 34-37 (March 27, 1997).

[5] Another possible application of Section 272(c)(1) would require that a BOC automatically provide all requesting carriers with any CPNI that it used on behalf of or disclosed to its affiliate. Such other carriers, however, would still not have the customer's approval to use the CPNI and thus would still be at a great disadvantage.

an explicit, knowing oral approval under Section 222(c)(1) before a carrier may use or disclose CPNI. Only an affirmative approval process will satisfy the competitive goals of that provision, and such a process will protect consumers' privacy interests far more effectively than an opt-out process.[6] Under an opt-out process, almost all CPNI will become available to the carriers that possess it, reinforcing the monopoly-derived advantages of those carriers with the largest and most complete customer databases. Use of an opt-out procedure thus would effectively nullify any distinctions among services, resulting in the equivalent of a "single bucket" service definition approach, thereby eliminating Section 222(c)(1) as a meaningful safeguard.

It is crucial that the Commission understand that an approval solicitation service requirement in no way would make up for the anticompetitive effects of an opt-out approval procedure. While an opt-out procedure would make almost all of the BOCs' CPNI available to their affiliates, a biased solicitation could make much of that CPNI unavailable to other carriers. Moreover, AT&T would benefit disproportionately from an opt-out procedure combined with an approval solicitation service requirement. That is because BOCs presumably would not seek customer approvals on behalf of other carriers and their own affiliates until the BOCs or their affiliates were in a position to use the CPNI for their own long distance service marketing. Thus, a BOC would not solicit customers' approvals until it received in-region interLATA service authority in a given state.[7] Until a BOC obtained in-region authority for a given state, therefore, AT&T would be the only carrier with ready access to a large CPNI database -- namely, its own. AT&T would be able to use its vast reserve of CPNI for local service marketing immediately, while other IXCs would not have whatever benefits may accrue from BOC solicitations of customer approvals until each BOC obtained in-region authority in each state, thereby providing AT&T a tremendous head-start over other IXCs.

An approval solicitation service requirement would present other problems as well. Questions would arise as to how the CPNI

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[6] See, e.g., Further Comments of MCI Telecommunications Corporation at 5-10 (March 17, 1997).

[7] If BOCs are securing customer approvals now for purposes of long distance service marketing, that presents another set of problems. Obviously, if such approvals are not obtained using the procedure ultimately required in the order to be issued in this docket, any marketing database containing the CPNI for which approval was sought will have to be purged of all improperly approved CPNI.

should be transmitted to other IXCs, particularly if a given IXC wanted CPNI delivered in a different format from the way in which a BOC transmitted the CPNI to its own affiliate. Timing would also be problematical and difficult to enforce, since the slightest disparity in CPNI delivery times between the BOC's affiliate, or long distance marketing staff, and other IXCs would be extremely prejudicial. Timing issues would be especially difficult to resolve in situations where a BOC obtained customer approval on an inbound call. Charges for such information would also raise another set of issues. A BOC might charge its affiliate and all other carriers the same exorbitant price for CPNI. Nominally, the charge would be nondiscriminatory, but its economic impact would be anticompetitive. While the charge would be merely an intracorporate transfer for the BOC, it would be a real cost to all other IXCs.

MCI is so wary of the approval solicitation service proposals because it has experienced tremendous frustration in its dealings with the BOCs in analogous circumstances involving the transmission of information and, more generally, interconnections between networks. The inexplicably tenacious BOC resistance to the development and installation of nondiscriminatory OSS is a vivid illustration of the types of problems that will inevitably plague any approval solicitation service requirement and nondiscriminatory transmission of CPNI required as part of such a process. Given MCI's experiences, it is not reasonable to expect that a truly nondiscriminatory approval solicitation service requirement could ever be implemented and enforced. As explained above, the anticompetitive risks posed by such problems would be aggravated by opt-out approval. Such an approval process would give the BOCs and AT&T access to almost all of their CPNI, while an approval solicitation service requirement could well fail to provide other carriers equivalent access to the BOCs' CPNI. In short, the disastrous effects of an opt-out approval mechanism would not be cured by an approval solicitation service requirement.

If, in spite of all of these competitive dangers and administrative headaches, the Commission nevertheless were to adopt an approval solicitation service requirement in tandem with an opt-out approval mechanism, it would be absolutely necessary that all of the competitive and administrative problems discussed above be thoroughly analyzed and addressed. In order to minimize the administrative problems, it would probably be preferable to require that the BOC seek a blanket approval for all carriers, including its affiliate, without giving the customer the option of choosing among carriers. Although such an "all or nothing" approach would not fully maintain consumer control over CPNI, MCI would view that weakness as a necessary evil -- necessary to

counteract at least some of the competitive impact of opt-out approval combined with an approval solicitation service requirement. It would also be necessary for the Commission to make it clear that such blanket approval covers any telecommunications service, since while the BOC would want to use the CPNI for long distance service marketing, IXCs would want to use it for local service marketing.

In order to ensure as neutral and smoothly running an approval solicitation mechanism as possible, the Commission might well want to consider the use of a third party administrator. MCI has proposed the use of such a neutral administrator in the presubscribed interexchange carrier change context as a technique to prevent "slamming," and the same approach might be useful in ensuring neutral solicitation and nondiscriminatory disclosure of CPNI. Again, MCI must stress that even with such a third party administrator, an approval solicitation service requirement would not significantly ameliorate the dangers posed by an opt-out approval process.

MCI appreciates the opportunity to respond to these questions concerning the interplay of Sections 222 and 272. The original and one copy of this letter are being submitted for inclusion in the public record of this proceeding. Any inquiries about this letter may be directed to the undersigned.

Yours truly,

Frank W. Krogh

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